

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Accelerating Wireless Broadband)	WT Docket No. 17-79
Deployment by Removing Barriers to)	
Infrastructure Investment)	

Comments of
Eastern Shawnee Tribe of Oklahoma



EASTERN SHAWNEE TRIBE OF OKLAHOMA

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I. Introduction

The Eastern Shawnee Tribe (Tribe) is currently located in far northeastern Oklahoma. Historically Shawnees occupied a wide range of lands which includes many present-day states east of the Mississippi River. The United States government placed our settlement of Shawnees on the Lewistown Reserve in western Ohio per the *Treaty with the Shawnee*, September 29, 1817, 7 Stat., 160 and later forcibly removed us to a reservation in Indian Territory per the *Treaty with the Seneca and Shawnee*, December 29, 1832, 7 Stat., 411.

Our tribe protects irreplaceable sites and locations that are of religious and cultural significance to our people today by continuing the successful collaborative processes that have been established with federal agencies, other Indian tribes, and project developers.

The Federal Communications Commission (Commission) has been a model example of how government agencies can facilitate infrastructure development while continuing to uphold the government's trust responsibility to Tribes as well as the government's statutory obligations to protect historic properties and cultural resources.

The Commission's Tower Construction Notification System (TCNS) program has proven to be a very useful tool to track, monitor, and expedite the placement of cellular technology infrastructure and serves as a model for how the federal government, Tribal Nations and industry can work together in a meaningful way to encourage infrastructure development while respecting tribal sovereignty. With the emerging 5G technology by the wireless telecommunications industry our tribe sees the benefits of modernizing the existing TCNS system to meet the needs of the future.

The Commission has a duty to recognize Tribal Nations as sovereigns, derived from the United States Constitution, federal statutes, and legal decisions which outline the government-to-government relationship between Tribal Nations and the federal government. During the last 50 years, every presidential administration has adhered to policies supporting Tribal self-determination.

It took time to develop TCNS with tribal participation. Developing major changes via the Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry should in turn be considered carefully by the Commission. It is disappointing that the NPRM was developed without input from Tribes.

The Eastern Shawnee Tribal Historic Preservation Office filed comments on this docket while the notice was still a draft. In addition to those previous comments submitted April 13, 2017, these comments address specific questions in the Notice of Proposed Rulemaking.

II. Notice of Proposed Rulemaking

A. Streamlining State and Local Review

1. "Deemed Granted" Remedy for Missing Shot Clock Deadlines

The Tribe is providing our cultural assessments in a timely manner and we do not intentionally hold up projects. We continue to meet the 30 day period for researching and supplying our reviews, which begins after the complete package of necessary information arrives in our offices.

B. Reexamining NHPA and NEPA Review

1. Background

The Tribe insists that NHPA and NEPA review are essential for the protection of cultural resources. Tribes are governments looking out for the health, safety and advancement of their people and the protection of lands and resources.

Builders, industry consultants, municipalities, land owners are paid for various areas involvement associated with the construction of communication structures. Tribes provide the service of reviewing the construction area for determining clearance which is also associated with licensing of communication structures under NHPA. The fees for our reviews pertain to the costs associated with conducting research and the administrative costs included in reporting of this research.

2. Updating Our Approach to the NHPA and NEPA Review

a. Need for Action

We agree on the timeliness of reviewing how the TCNS system is operating and making recommendations on how to improve -- both from Tribal perspectives, as well as from the industry and the Commission itself.

Industry does not participate in sharing site reviews amongst themselves. Their lack of participating in the non-competing clause impedes deployment of infrastructure as well as wireless services. Essentially their competitiveness hinders accelerating wireless broadband deployment. If the non-compete clause was removed and federal agencies used the same standard of rules, industry could deploy infrastructure with less cost. The use of this clause makes tower building costs prohibitive.

The TCNS could be updated to identify previously researched areas, which would alleviate the process of duplicated reviews and in so doing, industries' desire to change the definition of federal undertaking within the National Historic Preservation Act could be averted.

Several wireless providers have stated anecdotally that they have never found or caused damage to tribal cultural and historic properties. It is our tribe's practice to communicate with industry consultants to avoid sites by advocating for slight changes in construction plans to avoid cultural sites which in turn is a benefit to industry which assists them in avoid costly and legal challenges.

The fact that there has been so little damage to protected properties in this process is a testament to TCNS being an extremely effective way to avoid irreparable damage to statutorily protected cultural and historic properties. The Commission should recognize this as a success in their efforts to protect cultural and historic properties, not as a means to limit tribal involvement.

b. Process Reforms- Tribal Fees

Batching projects is an effort the Tribe is willing to discuss further, although this is a bigger discussion than a 30-60 day review of documents if the desired result is to work for all parties. Batching of projects concerning ground disturbance has not worked out well for us most recently. Some industry consultants have attempted this and when certain projects within the batch required us to notify the consultant, this was problematic as all projects within the batch have the same TCNS number.

There is no dispute that Tribal Nations should be compensated for providing consultant services. Builders, industry consultants, municipalities and land owners are paid for various areas of involvement associated with the construction of communication structures. Tribes provide the service of reviewing the construction area for determining clearance which is also associated with licensing of communication structures under the National Historic Preservation Act.

We provide a procedure summary listing our submission requirements at our initial contact with industry consultants. Our tribe employs a team of individuals which provide prompt responses to cell tower notifications. Due to our vast area of interest, it is efficient for us to seek payment from the consultant following our initial notification of the project through the TCNS program. Our fees are kept lower by avoiding a billing/collection effort.

Our areas of interest are determined through information obtained in published documents of researchers which have verified the presence of Shawnee villages in 19 present day states from the 1550s forward. In addition to these sites Shawnee summer village sites, ceremonial areas, battle sites, hunting camp sites, resource collection sites and removal routes are areas of additional interest which potentially include the burials of Shawnee ancestors that may be impacted by building new infrastructure.

Of course, it is common for Federal agencies, including the Commission, as well as other types of government experts to charge reasonable fees for their services. Charging fees for government services is a well-practiced and common part of working with sovereign governments in America. 36 CFR 800.4(c)(1) recognizes that Tribal Nations have "special expertise" in the evaluation of sites of importance to them.

c. NHPA Exclusions for Small Facilities

Deployment of poles within the right of way (ROW) that involve ground disturbance for new poles must be continued to be reviewed by Tribes. One exception to this would be if this ROW had undergone the Section 106 process by tribes.

The Commission asks how ground disturbance should be defined. We define ground disturbance as a turning of soil, in any way.

Our Tribe is amenable to opting out of reviewing replacement poles that have been previously reviewed. We recommend TCNS be modified so industry consultants can easily notate that this area was previously reviewed.

Continuing reviews of previously reviewed collocations without ground disturbance should cease in the opinion of the Tribe. The TCNS needs modified to allow industry consultants to easily note this information as opposed to the opportunity they have now, which offers the option to explain this in a narrative or not complete the narrative box. The issue of ending reviews on previously reviewed collocations without ground disturbance is an issue the Commission should consult with Indian Nations about and not leave it to industry to work out with Tribes.

3. Collocations on Twilight Towers

The existence of Twilight Towers is an example of the FCC failing to uphold its trust responsibility to Tribes. We understand the history that allowed for Twilight Towers and understand why the Commission seeks comment regarding collocations on Twilight Towers. These towers, whether they were built between 2001 and 2005 or after 2005, have the same probability as other towers to impact, disturb, and affect tribal cultural and historic properties.

In several national meetings over the past several years to discuss Twilight Towers and non-compliant towers, we have made repeated requests for the locations of said towers, but we have

been rebuffed by industry and the tower companies with the statement that they do not know where these towers are located. We request the locations of these towers prior to recommending how to move forward with a process to resolve the outstanding nature of their compliance with federal laws. The NPRM also includes the statement, "These towers have been standing for 12 years or more and in the vast majority of the cases, no adverse effects have been brought to the attention of the FCC." This statement is indicative of the lack of understanding industry has for issues of importance to Tribes.

The Tribe requires we be allowed to review all non-compliant towers, including Twilight, for impacts to historic and cultural properties. If collocations are to disturb ground, we believe that we should be allowed the opportunity to be consulted.

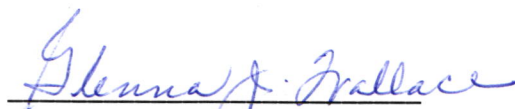
Conclusion


The Tribe is very concerned with the proposed policy changes contained in the NPRM. Not only do these changes have the potential to harm a largely functional Tribal review process and Tribal culture resources, they run counter to the intent of many laws, including the National Historic Preservation Act.

As we prepare the FY 2018 Tribal Budget in regard to the staff and facilities needed to maintain the team working on this program, it is most difficult to propose what is needed. Additionally, we are concerned about the timeline for Commission's decision making in regard to the NPRM.

It is the Commission's obligation to our Tribe to consult on any major changes to Federal Government processes that impact Tribal Nations. The Commission's obligation to consult with us does not end when the Public Comment period ends. Outside of this 30-day comment time frame, our Tribe stands ready to work with the Commission to resolve outstanding issues.

Signed


Glenna J. Wallace, Chief


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